



INTERIOR BOARD OF INDIAN APPEALS

K.D. McPhail, d.b.a. Macro Oil Company v. Acting Muskogee Area Director,
Bureau of Indian Affairs

19 IBIA 40 (10/24/1990)

Denying reconsideration of:
18 IBIA 353



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

K. D. McPHAIL,
d.b.a. MACRO OIL CO.,
Appellant

v.

ACTING MUSKOGEE AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Denying Reconsideration
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: Docket No. IBIA 90-27-A
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:
: October 24, 1990

On July 6, 1990, the Board vacated an October 13, 1989, decision of the Acting Muskogee Area Director, which cancelled appellant's oil and gas lease for failure to post an increased bond. 18 IBIA 353. The Board held that, because there was nothing in the administrative record to support the increase in appellant's bond, the matter must be remanded to the Area Director for development of an adequate record and issuance of a new decision.

On October 19, 1990, the Board received a memorandum from the Acting Area Director, discussing bond requirements in appellant's situation. The memorandum concludes: "Based on the above information, we think an adequate record has been developed and request the issuance of a new decision." The memorandum does not indicate that copies were sent to the other parties to this appeal.

The Board construes this request as a petition for reconsideration under 43 C.F.R. 4.315. As such, however, it must be denied as untimely because it was not filed within 30 days of the Board's decision, as required by 43 C.F.R. 4.315(a).

It appears that the Acting Area Director misunderstood the Board's holding and believed that the required "new decision" was to be issued by the Board rather than the Area Director. This is not the case. The Area Director should issue a new decision concerning the bond requirement and include supporting data in the decision. If appellant fails to post the bond, the Area Director may initiate cancellation proceedings, including notice of appeal rights in any cancellation decision.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, the Acting Muskogee Area Director's petition for reconsideration is denied.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge